

Issues in a Utility Bankruptcy

Presented to:
Governor's Energy Consumers
Protection Task Force
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Topics to be Covered

- Bankruptcy Basics
- Recent Electric and Gas Utility Bankruptcies
- Participants
- Jurisdictional Conflicts
- Inherent Uncertainties

Bankruptcy Basics

- Types of Bankruptcy
 - Chapter 7 – Liquidation
 - Chapter 11 – Business Reorganization
- Chapter 11 Goals
 - Financially Sound Organization Emerging
 - Treat All Creditors Consistently & Equally
- Concepts & Terms
 - Automatic Stay
 - Bankruptcy Estate
 - Avoiding or Avoidance Powers
 - Executory Contracts
 - Priority of Claims
 - Plan of Reorganization

Recent Electric and Gas Utility Bankruptcies

- Jal Gas Company
- Wabash Valley Power Association
- Eastern Maine Electric Cooperative, Inc
- Public Service Company of New Hampshire
- Colorado-Ute Electric Association
- New Hampshire Electric Coop
- Columbia Gas Systems, Inc.
- El Paso Electric Company
- Cajun Electric Power Cooperative, Inc.
- Vermont Electric Cooperative & Vermont Electric Generation & Transmission Coop
- Pacific Gas & Electric Company – 04/06/2001
- NRG Energy Inc. – 05/14/2003
- Mirant – 07/14/2003

Participants

- Debtor
 - Generally operates business
 - Proposes Plan of Reorganization
- Creditors
 - Persons can hold positions on creditors committee and have expenses paid
 - Can propose plan of reorganization after expiration of exclusive period
 - Have right to vote on plan of reorganization
- Parties in Interest
 - Not defined
 - Broadly construed but subject to court's discretion
 - Can raise, appear, and be heard on any issue in case
 - No right to be on creditors committee

Jurisdictional Conflicts

- Bankruptcy Court
 - Section 105
 - Section 363 Transactions
 - Section 1123(a)(5)
- FERC
 - Executory Contracts
 - NRG Power Marketing, Inc.
 - Mirant
- State Regulatory Agency
 - Rates During Bankruptcy
 - Plan of Reorganization
 - Prudency Review of Actions Taken Pursuant to Bankruptcy Court Rulings or Orders

Inherent Uncertainties

- Legal
 - Law Not fully Developed
 - No Absolutes
- Practical
 - Emergent Entity
 - Valuation of Assets
 - Cost of Proceeding
 - Impact on Ratepayers